

EDMUND G. BROWN JR., Attorney General  
of the State of California  
PAUL C. AMENT  
Supervising Deputy Attorney General  
E. A. JONES III, State Bar No. 71375  
Deputy Attorney General  
ELAINE GYURKO  
Senior Legal Analyst  
California Department of Justice  
300 So. Spring Street, Suite 1702  
Los Angeles, California 90013  
Telephone: (213) 897-4944  
Facsimile: (213) 897-9395

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2008 409

JEFFRY MATTHEW FERNANDEZ  
248 S. Hemlock Street #12  
Ventura, California 93001

**A C C U S A T I O N**

Respiratory Care Practitioner License No. 21654

Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs (Board).

2. On or about September 25, 2000, the Board issued Respiratory Care Practitioner License Number 21654 to Jeffry Matthew Fernandez (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2010, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Board under the authority of the

1 following laws. All section references are to the Business and Professions Code (Code) unless  
2 otherwise indicated.

3 4. Section 3710 of the Code states: “The Respiratory Care Board of  
4 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
5 8.3, the Respiratory Care Practice Act].”

6 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,  
7 and revoke licenses to practice respiratory care as provided in this chapter.”

8 6. Section 3750 of the Code states:

9 “The board may order the denial, suspension or revocation of, or the imposition of  
10 probationary conditions upon, a license issued under this chapter, for any of the following  
11 causes:

12 “. . .

13 “(d) Conviction of a crime that substantially relates to the qualifications,  
14 functions, or duties of a respiratory care practitioner. The record of conviction or a  
15 certified copy thereof shall be conclusive evidence of the conviction.

16 “. . . .”

17 7. Section 3752 of the Code states:

18 “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
19 made to a charge of any offense which substantially relates to the qualifications,  
20 functions, or duties of a respiratory care practitioner is deemed to be a conviction within  
21 the meaning of this article. The board shall order the license suspended or revoked, or  
22 may decline to issue a license, when the time for appeal has elapsed, or the judgment of  
23 conviction has been affirmed on appeal or when an order granting probation is made  
24 suspending the imposition of sentence, irrespective of a subsequent order under Section  
25 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to  
26 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
27 accusation, information, or indictment.”

28 8. California Code of Regulations, Title 16, section 1399.370, states:

“For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“ . . .

“(c) Conviction of a crime involving driving under the influence or reckless driving while under the influence.

“ . . . ”

## COST RECOVERY

9. Section 3753.5, subdivision (a) of the Code states:

“In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case.”

10. Section 3753.7 of the Code states:

“For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.”

11. Section 3753.1, subdivision (a) of the Code states:

“An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.”

### CAUSE FOR DISCIPLINE

(Conviction of a Crime)

12. Respondent is subject to disciplinary action under sections 3750, subdivision (d), and 3752 of the Code, and California Code of Regulations, Title 16, section

1 1399.370, subdivision (c), in that he was convicted of a crime substantially related to the  
2 qualifications, functions or duties of a respiratory care practitioner. The circumstances are as  
3 follows:

4           A.     On or about July 15, 2008, an Oxnard police officer observed Respondent  
5 driving his vehicle at a high rate of speed. The vehicle fishtailed, turned, and headed  
6 directly toward the officer who swerved to avoid a collision. Respondent drove his  
7 vehicle into a townhouse complex, traveling over several speed bumps at about 45 to 50  
8 miles per hour, and then suddenly stopped. The officer observed two young children in  
9 the backseat of the vehicle. The officer made an enforcement stop. Upon contact with  
10 Respondent, the officer detected a strong odor of alcohol on his person. Respondent  
11 admitted that he had been drinking, and the officer recovered an opened bottle of 80 proof  
12 rum, one quarter full, from the interior of the passenger compartment. Respondent stated  
13 that he did not want to complete any of the field sobriety tests. The officer observed that  
14 Respondent swayed from side to side, his eyes were bloodshot and watery, and his speech  
15 was thick, slurred and repetitive. The results of his two breath tests indicated his blood  
16 alcohol content was .17%. Respondent was arrested for driving with blood alcohol level  
17 of .08 or more, reckless driving, and child endangerment. At the Oxnard jail facility,  
18 Respondent admitted that he had been drinking vodka about one hour before the traffic  
19 stop.

20           B.     On or about July 17, 2008, in Ventura County Superior Court Complaint  
21 No. 2008028965, Respondent was charged with driving under the influence of alcohol or  
22 drugs, in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor (Count  
23 1), and driving with .08% or higher blood alcohol level, in violation of Vehicle Code  
24 section 23152, subdivision (b), a misdemeanor (Count 2). Both Counts 1 and 2 included  
25 special allegations of driving with a blood alcohol content of .15% or higher, in violation  
26 of Vehicle Code section 23578, and having a minor passenger under the age of 14 in the  
27 vehicle, in violation of Vehicle Code section 23572.

28           C.     On or about September 26, 2008, Respondent was convicted upon his plea

1 of guilty to driving with .08% or higher blood alcohol level (Count 2). Both special  
2 allegations were stricken. Respondent was placed on probation for three years on a  
3 number of terms and conditions including: serve five days in county jail; complete a nine  
4 month first offender alcohol program; pay fines and fees of \$2,783.00; and comply with  
5 all standard DUI terms and conditions. Count 1 of the complaint was dismissed.

6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
8 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 9 1. Revoking or suspending Respiratory Care Practitioner License Number  
10 21654 issued to Jeffry Matthew Fernandez;
- 11 2. Ordering Jeffry Matthew Fernandez to pay the Respiratory Care Board the  
12 costs of the investigation and enforcement of this case, and if placed on probation, the costs of  
13 probation monitoring; and,
- 14 3. Taking such other and further action as deemed necessary and proper.

15 DATED: April 16, 2009

16  
17 Original signed by Colleen Whitestine for:  
18 STEPHANIE NUNEZ  
19 Executive Officer  
20 Respiratory Care Board of California  
21 Department of Consumer Affairs  
22 State of California  
23 Complainant  
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